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BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

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Federal Communications Commission  
Office of Secretary

In the Matter of )  
 )  
Closed Captioning and Video Description )  
of Video Programming )  
 )  
Implementation of Section 305 of the )  
Telecommunications Act of 1996 )  
 )  
Video Programming Accessibility )

MM Docket No. 95-176

COMMENTS OF TIME WARNER CABLE

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**COMMENTS OF TIME WARNER CABLE**

Time Warner Cable, a division of Time Warner Entertainment Company, L.P. ("Time Warner Cable"), hereby submits its comments in the above-captioned proceeding.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY.**

Pursuant to section 713 of the Telecommunications Act of 1996,<sup>2</sup> the Commission proposes to adopt closed captioning rules designed to facilitate access to cable programming by the hearing impaired. In this regard, the hearing impaired community has urged the Commission to require "captioning of as much programming as possible, as soon as possible."<sup>3</sup> Time Warner

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<sup>1</sup> Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, MM Docket No. 95-176, Notice of Proposed Rulemaking, FCC 97-4 (released January 17, 1997) ("Notice").

<sup>2</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act").

<sup>3</sup> Notice at ¶ 37.

Cable is sympathetic to the concerns of the hearing impaired. Indeed, Time Warner Cable agrees that the Commission should seek to promote the closed captioning of video programming.

Time Warner Cable notes that it has consulted with the National Cable Television Association on the issues raised in this proceeding and supports the Association's more broad-based comments. Time Warner Cable specifically would like to underscore its support for exemption of start-up cable programming, advertising, and interstitials from closed captioning obligations.

Time Warner Cable's comments will focus specifically on the more narrow but very important issue of closed captioning obligations for cable local origination programming. Time Warner Cable encourages the Commission to recognize that Congress gave the Commission authority to exempt certain classes of program services in this proceeding if, on balance, application of the closed captioning rules to such class would be "economically burdensome."<sup>4</sup> Time Warner Cable urges the Commission to grant such a class exemption for local cable origination programming. Such an exemption is justified for several reasons:

- The costs of closed captioning are every bit as substantial for local origination programming as for national program services. In fact, as described below, captioning costs could be particularly costly and complicated for certain types of local origination programming, such as local news.
- However, local origination programming, by its very nature, will never be able to capture the economies of scale achieved by national, or even regional program

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<sup>4</sup> See 47 U.S.C. § 613(d)(1).

services. For example, in Time Warner Cable's New York City franchise, arguably the best location for local origination in the country, the maximum potential audience for such programming is 1.4 million homes, a little over one percent of all U.S. television households. Therefore, local origination programming will always have a much smaller subscriber base over which it can spread the costs of captioning.

- Origination programming uniquely serves the needs of local residents, addressing topics and issues that are entirely overlooked or receive only minimal coverage by other local media. Because of its substantial costs, a closed captioning requirement will reduce the incentive to invest in such programming and, indeed, may eliminate that incentive in many franchise areas.

## **II. THE COMMISSION SHOULD EXEMPT THE CLASS OF LOCAL ORIGATION PROGRAMMING FROM THE CLOSED CAPTIONING REQUIREMENTS.**

Today, Time Warner Cable and the cable industry are making substantial investments and improvements in local origination programming. Cable local origination includes news, public affairs programming (such as coverage of local officials and governing bodies), interviews, local sporting events, parades, and local theatre, and many other topics of special interest to consumers. In particular, local origination programming increases the news and public affairs choices available to cable consumers, thereby providing a unique alternative to existing local news and public affairs offerings.<sup>5</sup>

Indeed, the Commission has stated that its "regulatory policy should encourage and promote, to the extent consistent

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<sup>5</sup> Because the broadcast television stations in these markets typically serve a broader geographic area including several communities, they generally lack sufficient broadcast time and other resources to provide programming addressing the breadth and depth of local programming available in cable local origination. Thus, cable local origination programming is particularly important to the local communities involved.

with the statute, new and innovative . . . services" such as news and public affairs programming.<sup>6</sup>

Local origination programming is far from a mature service. As a largely nascent service, local origination programming is particularly susceptible to large increases in the regulatory cost of providing service. Thus, an exemption from the closed captioning rules for this type of programming is especially appropriate.

Congress directed the Commission to take into account several factors when considering exemptions to closed captioning, including (but not limited to) the following:

(1) the nature and cost of providing closed captions; (2) the impact on the operations of the program provider, distributor, or owner; (3) the financial resources of the program provider, distributor, or owner and the financial impact of the program; (4) the cost of the captioning, considering the relative size of the market served or the audience share; (5) the cost of the captioning, considering whether the program is locally or regionally produced and distributed; (6) the non-profit status of the provider; and (7) the existence of alternative means of providing access to the hearing impaired, such as signing.<sup>7</sup>

Five of these seven factors fully support a class exemption for local origination programming.

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<sup>6</sup> See New England Cable News, Memorandum Opinion and Order, 9 FCC Rcd 3231, 3237 (1994).

<sup>7</sup> H.R. Rep. No. 204, 104th Cong., 1st Sess. 115 (1995) ("House Report"). The term "provider" as used in section 713 "refers to the specific television station, cable operator, cable network or other service that provides programming to the public." Id. at 114.

**A. The Nature And Cost Of Providing Closed Captions.**

The Notice provides ample evidence that the costs of closed captioning are significant. The costs range from between \$120 and \$1,200 per hour for "real time" or "live" captioning<sup>8</sup> to between \$800 and \$2,500 per hour for off-line captioning.<sup>9</sup> The captioning costs for locally produced programming are no less than the costs for captioning more broadly distributed programming. In fact, the cost of captioning cable local origination programming may be greater in certain circumstances. Indeed, the Commission has recognized that "[f]or less expensive programming, such as local cable originations, the cost of captioning could be a significant proportion of total expenditures."<sup>10</sup>

The Commission's assessment of the cost of captioning cable local origination programming was prescient. In Time Warner Cable's experience, the cost of captioning local origination programming is large for several reasons. First, the equipment and software capital expenditures required to caption cable local origination programming are significant. Depending on the type and amount of programming involved, equipment and software costs may total from \$12,000 to \$50,000 per system. Some of these equipment costs are repeated for every separate cable headend.

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<sup>8</sup> See Notice at ¶ 20.

<sup>9</sup> Id. at ¶ 18.

<sup>10</sup> Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, MM Docket No. 95-176, Report, 3 Comm. Reg. 1058, 1062 (1996).

Second, the operating expenses required to caption local origination programming also are significant. For example, in Lewisville, Texas, the Time Warner cable system offers 60 hours of new local origination programming per year. It includes local programming for the cities of Irving, Coppell, Grapevine and Lewisville, Texas. The cost of closed captioning the Lewisville program will increase the program's preproduction cost by at least 17 percent.<sup>11</sup>

Finally, for 24 hour local origination news services,<sup>12</sup> imposing a captioning obligation would require that the service hire, at a minimum, 9 additional full-time employees.<sup>13</sup> Because breaking news can occur at any time, a 24 hour news service would need to have at least two highly proficient stenocaptioners

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<sup>11</sup> It requires approximately 2,950 personnel hours of editing and preproduction to produce the 60 hours of new programming per year in Lewisville, Texas. Time Warner Cable estimates that it would take an additional 500 hours to caption the programming.

<sup>12</sup> For example, Time Warner Cable in New York City provides "New York 1 News," a 24 hour news service covering the five boroughs of New York City and portions of Westchester County, New York, to 1.4 million cable subscribers.

<sup>13</sup> At minimum, seven full-time stenocaptioners would be required in addition to at least two technical and support staff members. Stenocaptioners are essentially court reporters specially trained to transcribe the audio feed of live programming as it is broadcast. However, the nationwide supply of real time stenocaptioners capable of meeting the accuracy requirements of closed captioning is estimated by some commentators to be fewer than 200. See Notice at ¶ 24. Demand for such services clearly will exceed supply for the foreseeable future, with the result that many programmers will be unable to obtain the captioning services necessary to comply with the rules.



available at all times. Time Warner Cable estimates that these costs could total approximately \$500,000.00 per year.<sup>14</sup>

In sum, closed captioning costs are substantial by any measure. However, when considered in light of their impact on the operations of cable local origination programming, the imposition of closed captioning obligations cannot be justified.

**B. The Impact Of Closed Captioning On The Operations Of The Programming Service.**

Simply put, the costs of closed captioning described above would substantially reduce or eliminate the incentive cable operators have to provide local origination services.<sup>15</sup> Even where the cost of closed captioning does not entirely undermine a local origination programming service, it could fundamentally reduce the quality of the service. For example, the cost of closed captioning will impair cable operators' ability to cover the depth and breadth of issues and events of interest to its community. As noted above, such a result is contrary to the Commission's long-standing policy of promoting "localism."

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<sup>14</sup> Seven stenocaptioners at the current average salary of \$50,000 per year will total \$350,000, not including benefits. Given the fact that there is an insufficient supply of stenocaptioners to meet today's demand, the increases in demand for such services likely to result from the Commission's rules will dramatically increase the salaries commanded by stenocaptioners, thereby further increasing the cost of providing such services.

<sup>15</sup> Closed captioning costs could have a particularly profound effect on the decision to initiate new local origination services. For example, start-up costs for a local news service offering 2-3 hours of new programming a day can total several hundred thousand dollars. Adding significant closed captioning obligations to this cost burden could very easily discourage the introduction of such a service.

In addition, mandatory closed captioning will provide a strong disincentive to offer live programming, because such programming will require the services of a qualified stenocaptioner, at a substantial incremental cost over and above the cost of captioning other types of programming.

Finally, for news-oriented local origination programming, adding stenocaptioners and other support personnel will require a substantial increase in the service's production and technical staff which, in turn, could reduce the resources available for newsgathering. In particular, a news service's ability to cover breaking news and provide investigative reports could be impaired.

Therefore, mandatory closed captioning obligations either will eliminate current and future local origination services or will so fundamentally alter such services that their value to all subscribers and the community will be substantially impaired. As demonstrated below, neither the financial resources of local origination programming nor the scale and scope of its distribution will mitigate the costs of closed captioning. The Commission should preserve and protect the development of local origination services by exempting them from the closed captioning requirements.

#### **C. Financial Resources Of The Programming Service.**

As noted, local origination programming does not achieve the revenue base of more broadly distributed services. Consequently, it has considerably less financial resources than regional and national programming services, and the cost increase resulting

from closed captioning therefore could make such programming financially untenable. Such a result would deprive communities of valuable local service.

**D. Local Origination Programming Serves a Relatively Small Geographic Area.**

Local origination programming is inherently limited to the community served by the cable operator. Thus, its maximum potential audience is small. Moreover, the actual viewing audience for local origination is small in relative terms when compared to the audience for other local programming, such as broadcast network affiliate local news. Time Warner Cable believes that the relative size of these audiences reflects the current potential viewership of local origination programming compared to other local programming. Thus, because local origination programming's audience reach and potential distribution are very modest compared to the audience reach and potential distribution of comparable local services, the burden on local origination is disproportionate and further supports grant of an exemption.

**E. By Definition, Local Origination Programming Is Produced And Distributed Locally.**

Needless to say, local origination programming is produced and distributed locally. This fact again diminishes the ability of such programming to generate the kinds of revenues that could justify the expense of closed captioning. One of the statutory purposes of Title VI regulation of cable services is to "assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services

to the public."<sup>16</sup> Consistent with that purpose, Congress has directed that the Commission give weight to the fact that programming is locally produced and distributed when considering exemptions from the closed captioning obligations, and the Commission should not fail to do so here.

\* \* \*

In conclusion, local origination programming can provide a valuable, unique and intensely local service to a cable system's subscribers and community. However, because local origination services lack economies of scale, the extraordinary costs of closed captioning will either stifle this developing programming service, or will negatively impact the service offered to subscribers. This would be particularly troubling in the context of local news and public affairs programming. Because this result would be contrary to the public interest, such programming should be exempt from the closed captioning rules.

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<sup>16</sup> 47 U.S.C. § 521(4).

**III. CONCLUSION.**

For the foregoing reasons, Time Warner Cable requests that the Commission exempt local origination programming as a class from the closed captioning requirements of the 1996 Act.

Respectfully submitted,

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